IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WA.No. 1797 of 2007

AGAINST THE JUDGEMENT IN WPC.24168/2006 Dated 11/06/2007
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APPELLANT/PETITIONER IN W.P:

ALAPPUZHA ANANTHA NARAYANAPURAM
THURAVOOR THIRUMALA DEVASWOM, REP. BY ITS
PRESIDENT SRI.RAJKUMAR KAMATH.

BY ADV. SRI.R.LAKSHMI NARAYAN
SMT.R.RANJINI

RESPONDENTS/RESPONDENTS IN W.P:
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1. TAHSILDAR,
KOZENCHERY TALUK OFFICE, KOZHENCHERY.

2. THE STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT REVENUE(SPL.CELL),
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY SR.GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & HARUN-UL-RASHID, J.

W.A.No.1797 of 2007

Dated, this the 1st day of August, 2007

JUDGMENT

H.L.Dattu, C.J.

Though this matter is posted for admission, by consent of the learned counsel appearing for the parties, the matter is taken up for final hearing.

(2) This writ appeal arises out of an order passed by the learned Single Judge in W.P.(C) No.24168 of 2006 dated 11th June, 2007. By the impugned order the learned Judge has rejected the writ petition. That is how the petitioner in the writ petition is before us in this writ appeal.

(3) The appellant before us is known as Aalappuzha Anantha Narayanapuram Thuravoor Thirumala Devaswom. According to the appellant, the main activity of the Devaswom is a religious and charitable activity.

(4) The appellant has a building consisting of 13 rooms. A notice was issued by the Tahsildar under the provisions of the Kerala Building Tax Act, 1975 (hereinafter referred to as 'the Act') to levy building tax under the Act. After receipt of the notice the petitioner had requested the Tahsildar to refer the matter to the State Government for adjudication whether the building falls under the provisions of sub-section (1) of Section 3 of the Act. The Tahsildar without doing so, has proceeded to levy the building tax. Aggrieved by the action of the Tahsildar, the petitioner was before this Court in W.P.(C) No.24168 of 2006.

(5) The learned Single Judge, as we have already stated, has rejected the writ petition.

(6) The learned counsel appearing for the appellant, at the time of

hearing of the matter on admission, would submit that if any question arises as to whether the building falls under sub-section (1) of Section 3 of the Act, the Tahsildar ought to have referred the matter to the State Government for decision. That has not been done according to the appellant and therefore, it is stated that the Tahsildar has no jurisdiction to pass the impugned order.

(7) Mr.Mohammed Rafiq, learned Senior Government Pleader appearing for the respondents sought to justify the levy of building tax by the Tahsildar and also the orders passed by the learned Single Judge.

(8) To appreciate the contention of the learned counsel for the appellant it would be useful to refer to Section 3 of the Act. The said Section reads as under:

> "**3. Exemptions.-** (1) Nothing in this act shall apply to -
>
> a) buildings owned by the Government of Kerala or the Government of India or any local authority; and
>
> (b) buildings used principally for religious, charitable or educational purposes or as factories or workshops.
>
> **Explanation –** For the purposes of this sub-section, "charitable purpose" includes relief of the poor and free medical relief.
>
> (2) If any question arises as to whether a building falls under sub-section (1) or under Section 3A, it shall be referred to the Government and the Government shall decide the question after giving the interested parties an opportunity to present their case.
>
> (3) A decision of the Government under sub-section (2) shall be final and shall not be called in question in any court of law."

(9) Section 3 of the Act starts with a non obstante clause. It states that the Act will not apply to the buildings owned by the State Government or the Government of India or any local authority, and secondly, if the buildings are

used principally for religious, charitable or educational purposes or as factories or workshops.

(10) Sub-section (2) of Section 3 of the Act envisages that if any question arises as to whether a building owned by a person is principally used for religious, charitable or educational purposes, the matter requires to be referred to the State Government and it is the State Government which can decide the question after affording an opportunity of hearing to the parties concerned.

(11) In the instant case, when a notice was issued by the Tahsildar directing the petitioner to show cause why building tax should not be levied and collected, the appellant had made a request to the Tahsildar to refer the matter for adjudication by the State Government. The Tahsildar without doing so has proceeded to pass an order levying building tax under the Act. In our opinion, this action of the Tahsildar is contrary to the provisions of the Act. We say so for the reason that when a question arises as to whether a building owned by a person is used principally for religious, charitable or educational purposes, that question requires to be decided by the State Government after hearing the parties concerned. In the instant case, such a thing has not been done. Therefore, we cannot sustain the order passed by the Tahsildar and also the orders passed by the learned Single Judge. In that view of the matter, we pass the following:

Order

(i) The order passed by the Tahsildar levying building tax under the provisions of the Kerala Building Tax Act, 1975 is set aside. Consequently, the orders passed by the learned Single Judge in W.P.(C) No.24168 of 2006 is also

set aside.

(ii) Now a direction is issued to the Tahsildar to refer the matter to the State Government as envisaged under sub-section (2) of Section 3 of the Act.

(iii) A further direction is issued to the State Government to consider the request made by the petitioner keeping in view the provisions of the Act as well as the observations made by this Court in several decisions.

(iv) With these observations and directions the writ appeal is disposed of.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(HARUN-UL-RASHID)
JUDGE

vns